

Buonaiuto, Kenneth

From: Philbin, Joseph
Sent: Thursday, March 3, 2016 2:15 PM
To: Catlow, Todd
Subject: RE: Schilling Computer - Call from John Sullivan [REDACTED]

Received Sir. Lt. Buonaiuto spoke with Sullivan and reminded him that they had previously spoken two years ago regarding the same matter.

Respectfully,

Major Philbin

From: Catlow, Todd
Sent: Thursday, March 3, 2016 1:05 PM
To: Philbin, Joseph <Joseph.Philbin@rjsp.gov>
Cc: Moynihan, Matthew <Matthew.Moynihan@rjsp.gov>
Subject: Schilling Computer - Call from John Sullivan [REDACTED]

Major Philbin,

I received a telephone call today from John Sullivan [REDACTED] who recently heard that the RISP/RIAG investigation into 38 Studios remains open. He provided the following information:

- He purchased a personal computer for \$100 at auction from the Schilling residence. Although he was not sure of the time period, news reports indicates the auction was in October 2013.
- At some point Sullivan learned that an investigation into 38 Studios was ongoing and offered the computer to the SEC Boston. He as referred to SEC Washington Official Jennifer Ross [REDACTED]
- At Ross' request, Sullivan sent the computer to the SEC Washington and is was returned to him approximately 10 days later.
- When the Schillings learned that Sullivan had the computer, they moved to have the computer returned.
- Through his attorney, Sullivan sold the computer back to the auction company for \$1000 after incurring about \$1,500 in legal expenses. A ProJo article puts this sale in October 2014.
- When asked, Sullivan said he did not see anything on the computer concerning 38 Studios. After my conversation with Sullivan, I reviewed a ProJo article that indicated the Schillings learned Sullivan had the computer when he asked for the password, so is unclear if Sullivan ever accessed the computer or looked at any of the contents.

The bottom line is that the SEC probably has an image of the hard drive.

Respectfully,

LTC Catlow

Buonaiuto, Kenneth

From: Catlow, Todd
Sent: Monday, March 7, 2016 4:36 PM
To: ODonnell, Steven
Cc: Moynihan, Matthew;Buonaiuto, Kenneth
Subject: SEC Complaint against RIEDC, Wells Fargo, Keith Stokes, J. Michael Saul and Peter Cannava
Attachments: sec-38-studios-complaint.pdf

Colonel,

Please see the attached SEC Complaint against RIEDC, Wells Fargo, Keith Stokes, J. Michael Saul and Peter Cannava.

Respectfully submitted,

Lt. Colonel Todd Catlow
Rhode Island State Police
401-444-1002

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

v.

**RHODE ISLAND COMMERCE CORPORATION
(F/K/A RHODE ISLAND ECONOMIC
DEVELOPMENT CORPORATION), WELLS FARGO:
SECURITIES, LLC, PETER M. CANNAVA,
KEITH W. STOKES, and JAMES MICHAEL SAUL,**

Defendants.

Civil Action No.

**JURY TRIAL
DEMANDED**

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges the following against defendants Rhode Island Commerce Corporation (formerly known as Rhode Island Economic Development Corporation) (“EDC”), Wells Fargo Securities, LLC (“Wells Fargo”), Peter M. Cannava (“Cannava”), Keith W. Stokes (“Stokes”), and James Michael Saul (“Saul”):

PRELIMINARY STATEMENT

1. This case involves misconduct by the EDC and Wells Fargo relating to an offering of municipal securities. On November 2, 2010, the EDC issued \$75,000,000 of taxable revenue bonds to investors in a private placement (the “38 Studios Bonds”). The EDC loaned most of the money it received from selling the 38 Studios Bonds to 38 Studios, LLC (“38 Studios”), a pre-revenue video gaming company headed by a former professional baseball player. The disclosure document provided to the investors who were offered the 38 Studios Bonds was materially misleading. This document failed to disclose that the project being financed by the

Bonds, the development of a video game, could not be completed with the financing the Bonds would provide. The document did not disclose that even with the proceeds of the loan financed by the 38 Studios Bonds, 38 Studios faced a known shortfall in funding. In light of the other disclosures made in the offering document, this omission was significant, and rendered the offering document a misleading half-truth.

2. The offering document was misleading in a second way. It failed to disclose the full amount of compensation that the offering's lead placement agent, Wells Fargo, was receiving as a result of the 38 Studios Bond offering. Wells Fargo's actual compensation from the offering was almost double that which was disclosed, as the result of a side deal that Wells Fargo had with 38 Studios. This undisclosed compensation, which created a potential conflict of interest, was material and should have been disclosed.

3. The offering document's failures were the result of misconduct by both the EDC, the issuer of the 38 Studios Bonds, and by Wells Fargo, the lead placement agent for the 38 Studios Bonds. These entities' failures, in turn, were caused by the recklessness or negligence of their employees.

4. Stokes and Saul were executives of the EDC, who through recklessness or negligence were responsible for the EDC's failure to make complete and truthful disclosures in the offering document for the 38 Studios Bonds. As discussed below, at the time of the offering, Rhode Island was experiencing high unemployment and the loan to 38 Studios was intended to increase employment opportunities in the state. While the EDC's Board may have been influenced by the star power of 38 Studios' personnel, or anxious to take action to address the significant unemployment in Rhode Island, Stokes and Saul had the obligation as EDC

executives to disclose to investors the known financial truths about 38 Studios' inability to complete the project the Bonds would finance with the funds the Bonds would provide.

5. Cannava, who was Wells Fargo's lead banker on the 38 Studios Bonds transaction, was responsible for Wells Fargo's failure to ensure that the offering document for the 38 Studios Bonds contained complete and truthful disclosures both about the need for additional funding -- beyond the Bonds -- to complete the project being financed, and Wells Fargo's compensation. Cannava, like Stokes and Saul, knew that 38 Studios would be unable to complete the project the Bonds would finance with the funds the Bonds would provide.

6. By recklessly or negligently engaging in the conduct described in this Complaint, defendants EDC and Wells Fargo violated Sections 17(a)(2) and (a)(3) of the Securities Act of 1933 (the "Securities Act"), which prohibit fraud in the offer or sale of securities. Defendants Stokes, Saul and Cannava aided and abetted those violations by their respective employers. In addition, defendant Wells Fargo violated Section 15B(c)(1) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules G-17 and G-32 promulgated by the Municipal Securities Rulemaking Board (the "MSRB"). These provisions proscribe rules for fair dealing and disclosure by municipal securities professionals. Defendant Cannava aided and abetted Wells Fargo's violations of both the Exchange Act and the MSRB Rules.

7. Against all defendants, the Commission seeks injunctions against future violations, and civil penalties. Against defendants EDC, Wells Fargo and Cannava, the Commission also seeks disgorgement of ill-gotten gains and prejudgment interest thereon. The Commission also seeks injunctions that would prohibit Stokes, Saul and Cannava from participating in the future issuance, underwriting, offer or sale of municipal securities.

JURISDICTION AND VENUE

8. The Commission brings this action pursuant to enforcement authority conferred by Section 20(b) of the Securities Act [15 U.S.C. §77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. §78u(d)].

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, Sections 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(b), 77t(d), 77v(a)], and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e), 78aa].

10. Defendants have directly or indirectly made use of the means or instrumentalities of interstate commerce, or of the mails, or the facilities of a national securities exchange in connection with the acts, practices, transactions, and courses of business alleged in this Complaint.

11. Venue in this district is proper under 28 U.S.C. §1391(b), Section 22(a) of the Securities Act [15 U.S.C. §77v(a)], and Section 27 of the Exchange Act [15 U.S.C. §78aa] because the events or omissions giving rise to the claim, specifically, the acts, practices, transactions and courses of business constituting the alleged securities law violation(s), occurred in substantial part within this district and because at least defendants EDC, Stokes and Saul reside in this district.

DEFENDANTS

12. The Rhode Island Commerce Corporation (formerly known as the Rhode Island Economic Development Corporation) (“EDC”) is a quasi-public Rhode Island corporation created by the State of Rhode Island to promote the expansion and development of new and existing businesses in Rhode Island and to encourage the State’s economic development. Its

principal place of business is in Providence, Rhode Island. The EDC is the issuer of the 38 Studios Bonds.

13. Wells Fargo Securities, LLC (“Wells Fargo”), is a Delaware limited liability company with its principal place of business in Charlotte, North Carolina. Wells Fargo is registered with the Commission as a broker-dealer and municipal advisor. It is also a municipal securities dealer and municipal securities broker as defined in Sections 3(a)(30) and (31) of the Exchange Act. Wells Fargo was the lead placement agent for the 38 Studios Bonds. During the time period when Wells Fargo was serving as the lead placement agent for the 38 Studios Bonds, Wells Fargo was also engaged by 38 Studios to perform private investment banking services.

14. Peter M. Cannava (“Cannava”), age 36, is a resident of New York, New York. Cannava is a Vice President employed in Wells Fargo’s public finance group. Cannava holds Series 7 and 63 securities licenses issued by the Financial Industry Regulatory Association. Cannava was the lead banker at Wells Fargo working on the 38 Studios Bonds. He had the authority to bind Wells Fargo and to sign contracts relating to the 38 Studios Bonds on behalf of Wells Fargo.

15. Keith W. Stokes (“Stokes”), age 57, is a resident of Newport, Rhode Island. During 2010 and 2011, Stokes was the EDC’s Executive Director, and its highest ranking employee under its Board of Directors.

16. James Michael Saul (“Saul”), age 60, is a resident of Barrington, Rhode Island. During 2010 and 2011, Saul was the EDC’s Deputy Director.

FACTUAL ALLEGATIONS

Background on 38 Studios

17. During 2010, 38 Studios, LLC ("38 Studios") was a limited liability company headquartered in Maynard, Massachusetts. It was in the business of developing video games. At the time, it was a start-up stage company and had no revenue.

18. The Chairman of 38 Studios' Board of Directors, and its majority shareholder, was Curt Schilling, a former professional baseball player. Other creative personnel working with 38 Studios were well-known in the video gaming industry, and the science fiction and comic book industries.

19. During 2010, 38 Studios was developing a single-player, role-playing video game that was scheduled to be released for sale in the fall of 2011. 38 Studios had entered into a publishing and distribution agreement with a large and well-known video gaming company for that single-player game, under which the large company would fund the development costs for that game, and distribute it to the public, in exchange for a significant share of the revenues that game generated.

20. During 2010, 38 Studios was also developing a "massively multi-player" online video game that was code-named Project Copernicus. During 2010, 38 Studios had not entered into a publishing and distribution agreement under which another entity would fund its development costs for Copernicus. 38 Studios anticipated that it would need \$75 million or more to complete the development of Copernicus. It was thus seeking financing to fund those development expenses.

21. In early 2010, 38 Studios was pursuing two potential options for the financing it needed: (i) selling about \$25 million in equity through a private placement to venture capital and

similar investors, and (ii) obtaining a loan from the EDC that would be funded through the proceeds of bonds issued by the EDC.

The EDC Issued the 38 Studios Bonds

22. The EDC is authorized by Rhode Island state law to issue bonds. The proceeds of those bonds may be lent to businesses to encourage economic development in Rhode Island. When the proceeds of municipal bonds are lent to a private party, those bonds are typically referred to as “conduit bonds” and the private entity receiving the funds is known as the “conduit borrower.”

23. The 38 Studios Bonds were conduit bonds, and 38 Studios was a conduit borrower.

24. The EDC was governed by a Board of Directors, which had up to thirteen members, including the Chair, who was the Governor of the State of Rhode Island. The Governor, with the advice and consent of the Rhode Island Senate, appointed the other members of the Board.

25. On June 11, 2010, the Rhode Island General Assembly passed a law authorizing the EDC to provide credit enhancement on its conduit bonds, in the form of a guaranty of the payment of debt service, under a new program, named the Jobs Creation Guaranty Program, in a principal amount of up to \$125,000,000 outstanding at any time. That law stated that “Rhode Island continues to suffer from continuing high unemployment and other ill effects from the most recent national recession” and that the EDC bonds were intended “to induce lending to companies growing their employment in Rhode Island.”

26. The EDC determined that it would use over half of the authorization allotted to it through the Jobs Creation Guaranty Program to guaranty the payment of debt service on conduit bonds that would fund a loan to 38 Studios.

27. On July 26, 2010, the EDC's Board voted to authorize the issuance of the 38 Studios Bonds and issued a resolution to that effect. Attached to the resolution was a Term Sheet between the EDC and 38 Studios which outlined the terms on which the EDC would loan the Bonds' proceeds to 38 Studios. The Term Sheet was signed by Stokes on behalf of the EDC, and stated that the purpose of the loan was to "provide the necessary financing to relocate 38 Studios to Rhode Island, complete production of [its video game called] Copernicus, and capitalize the company's growth and expansion in Rhode Island."

28. On November 2, 2010, the EDC sold \$75,000,000 worth of the 38 Studios Bonds to investors through a private placement (the "38 Studios Offering"). The EDC loaned approximately \$50 million of the \$75 million in proceeds it received from investors to 38 Studios. The remainder of the \$25 million in proceeds from the 38 Studios Offering was used to pay expenses related to the Offering, and to establish both a reserve fund (about \$12.7 million) that could be used to make some future payments to investors, and a capitalized interest fund (about \$10.6 million) to pay interest on the bonds for their first year.

29. The 38 Studios Bonds were offered to investors through a Private Placement Memorandum dated October 22, 2010 (the "Bond Placement Memo"). The Bond Placement Memo was the key disclosure document that described to potential investors the Bonds that they were being offered. It described the sources and uses of proceeds of the Bonds, the security for the Bonds, and other terms of the Bonds. It also described the EDC and 38 Studios, including the 38 Studios project that would be financed with the Bonds' proceeds. The Bond Placement

Memo also described some of the risks of investing in the 38 Studios Bonds, and contained descriptions of the other entities involved in issuing the Bonds.

30. The Bond Placement Memo stated that 38 Studios would make loan payments to the EDC from the revenues it earned from selling its video games. The EDC would then use those loan payments to make principal and interest payments to bondholders.

31. The Bond Placement Memo cautioned investors that, in the event of a default by 38 Studios, the principal and interest payments due on the Bonds were not liabilities of the State of Rhode Island. However, to the extent the EDC had insufficient funds to satisfy its payment obligations to bondholders, the Governor was obligated to ask the State's General Assembly to appropriate money as part of its budget to pay the shortfall to the EDC, so that the EDC could make principal and interest payments to bondholders. The General Assembly was not obligated to make those appropriations. The State's commitment to provide funds to the EDC was therefore considered a "moral obligation" of the State. In exchange for its "moral obligation" guaranty, the State required an up-front fee of \$375,000, plus an annual fee equal to 1.5% of the outstanding principal amount of the bonds.

32. The 38 Studios Bonds paid investors significantly higher interest rates than general obligation bonds issued by the State of Rhode Island at about the same time. Unlike the "moral obligation" behind the 38 Studios Bonds, Rhode Island's general obligation bonds were backed by the full faith and credit of the State.

33. The Bond Placement Memo also stated that the 38 Studios Bonds were insured by a private insurance company. That means that the insurance company would guarantee that bondholders would be paid principal and interest on the 38 Studios Bonds under the terms of the insurance policy if neither 38 Studios made its loan payments nor the State appropriated the

funds needed to make the scheduled payments. In return, the private insurance company received an up-front premium payment of \$562,935, which was paid from the proceeds of the 38 Studios Bonds.

Stokes and Saul Played Key Roles in the EDC's Issuance of the 38 Studios Bonds

34. Stokes was the EDC's Executive Director. He was the agency's head, and was the person primarily responsible for communicating with the EDC's Board. He also had the authority to bind the EDC, and was the individual who signed both the Bond Placement Memo, and the Term Sheet with 38 Studios, on behalf of the EDC.

35. When the EDC was considering whether to make the loan to 38 Studios, and to issue the 38 Studios Bonds, Stokes was heavily involved in both communications to EDC Board members about the potential transaction and in presentations at EDC Board meetings. He participated on behalf of the EDC in meetings related to the potential transaction with representatives from 38 Studios, Wells Fargo, the EDC's financial advisor and consultants, and other members of Rhode Island State government. For the meetings that Stokes did not attend, he was briefed by his staff about what took place at the meetings.

36. Saul was the EDC's Deputy Director. He has a background in accounting. He reported to Stokes. Saul had primary responsibility at the EDC for overseeing the analysis and reporting on the financial aspects of the potential 38 Studios Bond transaction. He was the EDC's lead representative to the Bond Working Group, the group of people who communicated regularly about the transaction. He also made presentations to the EDC's Board about the terms of the potential 38 Studios transaction, and in particular, led presentations that described 38 Studios' financial projections and the anticipated likelihood that 38 Studios would be able to repay an EDC loan.

37. Both Stokes and Saul reviewed the Bond Placement Memo for the EDC, and Stokes signed the Bond Placement Memo on behalf of the EDC.

Wells Fargo's Dual Roles

38. Wells Fargo was involved in two ways in trying to obtain financing for 38 Studios. First, its investment banking group was hired by 38 Studios to conduct an equity private placement. Second, its public finance group was hired by the EDC to be the lead placement agent for the 38 Studios Bond Offering. Wells Fargo's work on these two financing options overlapped during the spring of 2010.

The Equity Offering

39. In the spring of 2010, 38 Studios and Wells Fargo had discussions about how Wells Fargo could assist the company in obtaining financing. Options discussed at the time included both an equity offering and financing obtained through a Rhode Island bond issuance. 38 Studios was interested in pursuing both sources of potential financing.

40. On May 20, 2010, 38 Studios signed an engagement letter (the "May 20 Agreement") with Wells Fargo's investment banking group to raise money for 38 Studios by selling equity. In recognition of the fact that 38 Studios might elect to proceed with a potential financing through the EDC and cease its attempts to raise equity financing, the May 20 Agreement specified that Wells Fargo would be paid "Alternative Financing Fees" based on certain milestones related to the 38 Studios Bond Offering. Specifically, 38 Studios agreed to pay Wells Fargo the following fees:

(a) A "RIEDC consulting fee" of \$25,000 that was "earned on the day after the first meeting" between the EDC, 38 Studios and Wells Fargo to discuss "the issuance of municipal bonds on behalf of" 38 Studios;

(b) A “structuring fee” of \$75,000 that was “earned upon the decision by [38 Studios] at its sole discretion, to actively pursue” a transaction in which the EDC issued bonds on behalf of 38 Studios; and

(c) An “alternative financing option closing fee” of \$300,000 “payable upon the closing” of a transaction in which the EDC issued bonds on behalf of 38 Studios.

41. The May 20 Agreement also obligated 38 Studios to “use its best efforts, . . . to engage Wells Fargo Securities as sole-, lead-, and book-running agent or underwriter” for any contemplated bond transaction involving the EDC.

42. Pursuant to the May 20 Agreement, Wells Fargo engaged in significant efforts to obtain equity financing for 38 Studios. Wells Fargo conducted due diligence on 38 Studios and prepared an Equity Private Placement Memorandum which contained extensive detail about the company. Wells Fargo sent that Equity Private Placement Memorandum to approximately 200 potential investors, and engaged in follow-up activities in an attempt to interest those prospects in an investment in 38 Studios.

43. The Equity Private Placement Memorandum did not attract any investors, and in June 2010, 38 Studios and Wells Fargo ceased working on the attempted equity financing in favor of pursuing financing through an EDC bond offering.

The Bond Offering

44. The EDC retained Wells Fargo as the lead placement agent on the 38 Studios Bond Offering. A “placement agent” in a private placement like the 38 Studios Bond Offering has a role similar to that of an underwriter in a public bond offering. Wells Fargo had an obligation under the federal securities laws to conduct an investigation into the 38 Studios Bond Offering, in order to obtain a reasonable belief in the truthfulness and completeness of the key

representations in the Bond Placement Memo. This investigation is commonly referred to as “due diligence.”

45. Wells Fargo also found investors for the 38 Studios Bonds and arranged for the bonds to be sold to those investors. One other broker-dealer had a more limited placement agent role than Wells Fargo, and arranged for the sale of some of the 38 Studios Bonds to investors.

46. Cannava had primary responsibility for Wells Fargo on the 38 Studios Bond Offering. Cannava had the authority to sign contracts and agreements on behalf of Wells Fargo relating to the 38 Studios Bond Offering. He reviewed and signed all of the major agreements relating to Wells Fargo’s participation in that offering, including the Bond Placement Agreement, and the Private Placement Agent’s Certificate. He also approved the Bond Placement Memo on behalf of Wells Fargo.

47. In the course of preparing the Bond Placement Memo, Cannava relied heavily on the Equity Private Placement Memorandum that Wells Fargo had prepared several months earlier for the potential equity financing. Cannava also relied on the due diligence that others at Wells Fargo had performed in connection with the potential equity offering to satisfy his obligation to perform due diligence in connection with the 38 Studios Bond Offering.

38 Studios’ Funding Gaps

48. Throughout its negotiations with the EDC during 2010, 38 Studios emphasized its need for at least \$75 million in order to complete Project Copernicus. 38 Studios also informed the EDC, Wells Fargo, and others involved in discussions about the potential bond issuance, that it would require additional funds, beyond the \$75 million that it needed to finish Copernicus, to move to Rhode Island and to fund its operations.

49. To explain its need for \$75 million, 38 Studios prepared and sent to the EDC a set of financial projections for the 2010-2015 time period that detailed the company's projected revenues and expenses, and provided an income statement, a cash flow statement and a balance sheet for those periods. Those financial projections included the assumption that 38 Studios would receive \$75 million in proceeds as the result of an outside debt financing. If the outside debt financing number were changed to reflect the approximately \$50 million that 38 Studios actually received from the EDC's financing, the projections would indicate that 38 Studios would run out of cash by the end of December 2011.

50. Stokes and Saul both received and reviewed 38 Studios' financial projections. Both Stokes and Saul knew that the financial projections assumed that 38 Studios would receive \$75 million in proceeds from the EDC offering. Saul analyzed these financial projections, and presented various scenarios based on these financial projections, to the EDC's Board.

51. As part of the closing of the 38 Studios Bond Offering, Stokes signed a "Certificate Regarding Financial Projections Required by Section 2.06 A(b)(iv)" of the Loan and Trust Agreement between the EDC and 38 Studios which certified that the financial projections provided to the EDC by 38 Studios were authentic and would be relied upon to perform calculations required by the parties' loan agreement.

52. In June 2010, Saul wrote a memorandum to Stokes and another member of the EDC's Board that specifically noted, given that the net proceeds of the bond would be less than \$75 million, that he needed to revisit 38 Studios' financial projections and assess "the impact closing costs may have [on] the Copernicus development budget." Saul thus knew, or should have known, that when corrected to reflect the approximately \$50 million that 38 Studios would receive from the bond issuance, the financial projections would show 38 Studios running out of

money by the end of 2011. Stokes also knew or should have known of this possibility because he was on notice that 38 Studios' financial projections assumed greater than the actual net proceeds from the bond issuance.

53. When considering whether to make a loan to a company, the EDC typically prepared a credit memorandum that analyzed the creditworthiness of the potential borrower. Saul supervised the EDC analyst who was assigned to analyze 38 Studios' creditworthiness. After that analyst looked at the financial projections provided by 38 Studios, and some other information provided by the company, he expressed significant concerns to Saul, including concerns about whether the assumptions underlying 38 Studios' financial projections were realistic. Shortly after expressing those concerns, the analyst was excluded from further communications about the potential 38 Studios transaction. Neither that analyst, nor anyone else at the EDC, prepared a credit memorandum that analyzed 38 Studios' ability to repay the EDC loan.

54. By mid-August 2010, at the latest, the EDC and Wells Fargo knew that 38 Studios would only receive about \$50 million in net proceeds from the bond offering. The balance of the proceeds would be used to fund certain reserves and to pay for expenses associated with the offering. The net proceeds that 38 Studios would receive from the offering had been discussed between the EDC, 38 Studios, and Wells Fargo for several months before August.

55. Stokes knew that 38 Studios would receive less in proceeds from the 38 Studios Bond Offering than 38 Studios needed to complete Project Copernicus. On July 26, 2010, on behalf of the EDC, Stokes signed a term sheet with 38 Studios which stated that the EDC understood that 38 Studios' "capital needs to bring project Copernicus to completion to be

approximately \$75,000,000.” At about that time, Stokes also knew that 38 Studios was going to receive about \$25 million less than it needed, in proceeds from the EDC’s bond offering.

56. Saul also knew that 38 Studios would receive less in proceeds from the 38 Studios Bond Offering than 38 Studios needed to complete Project Copernicus. He knew that 38 Studios had consistently expressed its need for \$75 million to complete Project Copernicus. Saul also knew, during the summer of 2010, that 38 Studios would only receive about \$50 million in net proceeds from the offering.

57. Wells Fargo and Cannava knew that 38 Studios would receive less in proceeds from the 38 Studios Bond Offering than 38 Studios needed to complete Project Copernicus. Cannava knew that 38 Studios needed at least \$75 million to complete Project Copernicus. He also knew, by July 2010, that 38 Studios would only receive about \$50 million in net proceeds from the bond offering.

The Bond Placement Memo Failed to Disclose 38 Studios’ Funding Gaps

58. Even though the EDC and Wells Fargo knew that 38 Studios would only receive about \$50 million from the Bond Offering when it needed at least \$75 million to complete Project Copernicus, the Bond Placement Memo failed to disclose this significant funding gap.

59. 38 Studios’ funding gap was known at the time the Bond Placement Memo was sent to investors. It was not speculative. It was an existing risk that should have been disclosed to potential investors in the offering.

60. 38 Studios’ funding gap meant that 38 Studios would need to raise at least \$25 million in new financing within a year of the Bond Offering. That immediate need for more funding was a material risk, particularly in light of 38 Studios’ failure to attract any equity investors when it sought, through Wells Fargo, to raise equity investments earlier in 2010.

61. The Bond Placement Memo's omission of the fact that 38 Studios would need additional financing in order to complete Project Copernicus was material. If 38 Studios were not able to obtain additional financing it would face a significant risk of default on its loan payments to the EDC and insolvency.

62. The Bond Placement Memo also included statements about 38 Studios' financial condition that were rendered misleading by its significant omission that 38 Studios would need financing in addition to the proceeds of the Bond Offering in order to complete Project Copernicus. In particular:

a. The Bond Placement Memo stated that 38 Studios "is a development stage video game and entertainment company with no revenues and is dependent on the proceeds of the 2010 Bonds for future the [sic] development of Project CopernicusTM." This disclosure was misleading because it suggested that the proceeds of the 2010 Bonds would be sufficient to develop Project Copernicus.

b. The Bond Placement Memo also stated that, on July 6, 2010, 38 Studios' auditor "issued a 'going concern' opinion in connection with the Company's most recent audited financial statements stating that the Company will require additional financing to fund future operations and raising substantial doubt about the Company's ability to continue as a going concern." This disclosure was misleading because it suggested that the proceeds of the Bond Offering were sufficient "additional financing to fund future operations" and failed to disclose that additional financing on top of the Bonds' proceeds would be needed.

63. Stokes and Saul were responsible for the failure of the Bond Placement Memo to disclose 38 Studios' funding gap. They both knew about the funding gap and knew or should have known that it was not disclosed in the Bond Placement Memo.

64. Cannava was also responsible for the failure of the Bond Placement Memo to disclose 38 Studios' funding gap. Cannava was the person at Wells Fargo responsible for reviewing and approving the Bond Placement Memo on behalf of Wells Fargo. He knew about 38 Studios' funding gap, and knew or should have known that it was not disclosed in the Bond Placement Memo.

The Bond Placement Memo Failed to Disclose Wells Fargo's Extra Fees

65. The Bond Placement Memo specified that Wells Fargo and another broker dealer were acting as placement agents for the 38 Studios Bond Offering and would be compensated through a "placement agents' fee" of \$634,065. Wells Fargo's share of that "placement agents' fee" was \$406,250. The balance of the "placement agents' fee" was paid to the other broker-dealer who acted as a placement agent in the 38 Studios Offering.

66. The Bond Placement Memo also stated that Wells Fargo would be paid \$50,000 by 38 Studios "in connection with their disclosure and due diligence of the Company with respect to this transaction." No other fees or compensation to Wells Fargo were disclosed in the Bond Placement Memo.

67. A separate Bond Placement Agreement, which was referenced in the Bond Placement Memo, was entered into between Wells Fargo, the EDC and 38 Studios. Cannava signed the Bond Placement Agreement on behalf of Wells Fargo. That agreement stated that the "Placement Agent does not anticipate any remuneration with respect to the 2010 Bonds other than the Placement Agent's discount of \$634,065 and the disclosure fee of \$50,000."

68. Wells Fargo's statement about its compensation in the Bond Placement Memo was a misleading half-truth, and its statement in the Bond Placement Agreement about its compensation was false.

69. In fact, soon after the Bond Offering closed, and pursuant to the May 20 Agreement, 38 Studios paid Wells Fargo an additional \$400,000 as a result of meeting milestones with respect to the 38 Studios Bond Offering. 38 Studios also paid Wells Fargo about \$23,000 in expenses it had incurred. 38 Studios made that payment with proceeds it received from the Bond Offering. If the 38 Studios Bond Offering had not closed, Wells Fargo would not have received \$300,000 of that \$400,000 fee payment. That extra \$400,000 was nearly equal to the disclosed compensation of \$406,250 that Wells Fargo received.

70. Cannava was responsible for Wells Fargo's failure to disclose its additional fees in the Bond Placement Memo and its misstatement about the fees it would receive in the Bond Placement Agreement. He reviewed and approved the Bond Placement Memo on behalf of Wells Fargo, and signed the Bond Placement Agreement on behalf of Wells Fargo.

71. Cannava was aware that Wells Fargo's investment bankers were working with 38 Studios to obtain equity financing, that an agreement between 38 Studios and Wells Fargo governed that work, and that 38 Studios had agreed to pay Wells Fargo a fee after the Bond Offering closed. Before the Bond Offering closed, Cannava was present at a meeting where this arrangement was discussed. Cannava also used substantial portions of the due diligence performed by his investment banking colleagues to satisfy his and Wells Fargo's due diligence obligations relating to the 38 Studios Bond Offering. The May 20 Agreement was also available to Cannava, both from Wells Fargo's files, and as part of the contract summaries in the due diligence files compiled for purposes of the 38 Studios Bond Offering. It was also a document

he should have reviewed in performing due diligence on the section of the Bond PPM that described 38 Studios' "Commitments, Contingencies and Outstanding Debt Obligations."

Cannava thus knew or should have known that Wells Fargo was receiving substantial additional compensation with respect to the 38 Studios Bonds, and he acted recklessly or negligently in failing to disclose that additional compensation.

72. Wells Fargo's and Cannava's failure to disclose the additional compensation that Wells Fargo was receiving in connection with the 38 Studios Bond Offering was material. The undisclosed compensation was nearly equal to the disclosed compensation. Underwriters in municipal securities offerings are required by MSRB Rules to disclose the compensation they receive. Further, the fact that Wells Fargo was receiving compensation in this transaction both as a result of its role as a placement agent hired by the EDC and as a result of its work as an agent for 38 Studios created a potential conflict of interest that should have been disclosed to potential investors.

38 Studios' Default

73. After obtaining the net proceeds from the 38 Studios Bonds, 38 Studios attempted to obtain the additional financing it would need to complete Project Copernicus. It was unable to do so.

74. In the spring of 2012, 38 Studios defaulted on its loan payments to the EDC.

75. 38 Studios filed a petition for liquidation in the United States Bankruptcy Court for the District of Delaware in June 2012. That bankruptcy proceeding is pending.

76. Bondholders were paid the interest due on the 38 Studios Bonds through November 2012 from the Capitalized Interest Fund. To date, bondholders have been paid principal and interest on the 38 Studios Bonds when those payments were due from both the

Capital Reserve Fund and as a result of decisions made by the Rhode Island General Assembly to appropriate funds to make those payments.

77. At the time of 38 Studios' default, the outstanding principal and interest on the 38 Studios Bonds, excluding amounts previously reserved, was approximately \$90 million.

FIRST CLAIM FOR RELIEF (against the EDC and Wells Fargo)

**Fraud in the Offer or Sale of Securities in
Violation of Section 17(a)(2) of the Securities Act**

78. The Commission repeats and incorporates by reference the allegations in paragraphs 1-77 above as if set forth fully herein.

79. The 38 Studios Bonds are "securities" under Section 2(a)(1) of the Securities Act [15 U.S.C. §77b(a)(1)].

80. By engaging in the conduct described above, the EDC and Wells Fargo, directly and indirectly, acting recklessly, or negligently in the offer or sale of securities by use of the mails or the means or instruments of transportation or communication in interstate commerce have obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

81. By engaging in the conduct described above, the EDC and Wells Fargo have violated and, unless enjoined, will continue to violate Section 17(a)(2) of the Securities Act [15 U.S.C. §77q(a)(2)].

SECOND CLAIM FOR RELIEF (against the EDC and Wells Fargo)

**Fraud in the Offer or Sale of Securities in
Violation of Section 17(a)(3) of the Securities Act**

82. The Commission repeats and incorporates by reference the allegations in paragraphs 1-77 above as if set forth fully herein.

83. The 38 Studios Bonds are “securities” under Section 2(a)(1) of the Securities Act [15 U.S.C. §77b(a)(1)].

84. By engaging in the conduct described above, the EDC and Wells Fargo, directly and indirectly, acting recklessly, or negligently in the offer or sale of securities by use of the mails or the means or instruments of transportation or communication in interstate commerce have engaged in transactions, acts, practices or courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities.

85. By engaging in the conduct described above, the EDC and Wells Fargo have violated and, unless enjoined, will continue to violate Section 17(a)(3) of the Securities Act [15 U.S.C. §77q(a)(3)].

THIRD CLAIM FOR RELIEF (against Stokes and Saul)
Aiding and Abetting Fraud in the Offer or Sale of Securities in
Violation of Sections 17(a)(2) and (a)(3) of the Securities Act

86. The Commission repeats and incorporates by reference the allegations in paragraphs 1-77 above as if set forth fully herein.

87. By engaging in the conduct described above, the EDC, directly and indirectly, acting knowingly, recklessly, or negligently in the offer or sale of securities by use of the mails or the means or instruments of transportation or communication in interstate commerce: (a) have obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (b) have engaged in transactions, acts, practices or courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities.

88. Stokes knowingly, recklessly or negligently provided substantial assistance to the EDC's violations of Section 17(a)(2) and (a)(3) of the Securities Act by, among other things, signing the Bond Placement Memo and failing to ensure that it disclosed that 38 Studios would require additional financing to complete Project Copernicus.

89. Saul knowingly, recklessly or negligently provided substantial assistance to the EDC's violations of Section 17(a)(2) and (a)(3) of the Securities Act by, among other things, reviewing the Bond Placement Memo and failing to ensure that it disclosed that 38 Studios would require additional financing to complete Project Copernicus.

90. By engaging in the conduct described above, Stokes and Saul each aided and abetted violations of Section 17(a)(2) and (a)(3) of the Securities Act [15 U.S.C. §77q(a)(2), (3)].

FOURTH CLAIM FOR RELIEF (against Cannava)
Aiding and Abetting Fraud in the Offer or Sale of Securities in
Violation of Sections 17(a)(2) and (a)(3) of the Securities Act

91. The Commission repeats and incorporates by reference the allegations in paragraphs 1-77 above as if set forth fully herein.

92. By engaging in the conduct described above, Wells Fargo, directly and indirectly, acting knowingly, recklessly, or negligently in the offer or sale of securities by use of the mails or the means or instruments of transportation or communication in interstate commerce: (a) have obtained money or property by means of untrue statements of material fact or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (b) have engaged in transactions, acts, practices or courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities.

93. Cannava knowingly, recklessly or negligently provided substantial assistance to Wells Fargo's violations of Section 17(a)(2) and (a)(3) of the Securities Act by, among other things, reviewing and approving the Bond Placement Memo on behalf of Wells Fargo, and signing the Bond Placement Agreement on behalf of Wells Fargo.

94. By engaging in the conduct described above, Cannava aided and abetted violations of Section 17(a)(2) and (a)(3) of the Securities Act [15 U.S.C. §77q(a)(2), (3)].

FIFTH CLAIM FOR RELIEF (against Wells Fargo)
Violation of MSRB Rule G-17

95. The Commission repeats and incorporates by reference the allegations in paragraphs 1-77 above as if set forth fully herein.

96. Wells Fargo is a broker-dealer, municipal securities broker and a municipal securities dealer.

97. Pursuant to Section 15B(b)(2) of the Exchange Act [15 U.S.C. §78o-4(b)(2)], the MSRB proposes and adopts rule governing the conduct of brokers and dealers and municipal securities dealers in connection with municipal securities. Pursuant to Section 21(d)(1) of the Exchange Act [15 U.S.C. §78u(d)(1)], the Commission is charged with enforcing the MSRB rules.

98. By engaging in the conduct described above, Wells Fargo has, directly and indirectly, in the conduct of its municipal securities activities, failed to deal fairly with all persons, and has engaged in a deceptive, dishonest or unfair practice, in violation of Rule G-17 promulgated by the MSRB.

SIXTH CLAIM FOR RELIEF (against Wells Fargo)
Violation of MSRB Rule G-32

99. The Commission repeats and incorporates by reference the allegations in paragraphs 1-77 above as if set forth fully herein.

100. Wells Fargo is a broker-dealer, municipal securities broker and a municipal securities dealer.

101. By engaging in the conduct described above, Wells Fargo has sold municipal securities to a customer on a negotiated basis without providing disclosures, in the official statement or otherwise, concerning the amount of any fee received by Wells Fargo as agent for the issuer in the distribution of the securities, in violation of Rule G-32(a)(iii) promulgated by the MSRB.

SEVENTH CLAIM FOR RELIEF (against Wells Fargo)
Violation of Section 15B(c)(1) of the Exchange Act

102. The Commission repeats and incorporates by reference the allegations in paragraphs 1-77 above as if set forth fully herein.

103. Wells Fargo is a broker-dealer, municipal securities broker and a municipal securities dealer.

104. The 38 Studios Bonds are “securities” under Section 3(a)(10) of the Exchange Act [15 U.S.C. §78c(a)(10)].

105. By engaging in the conduct described above, Wells Fargo has, directly and indirectly, by use of the mails or the means or instrumentalities of interstate commerce, effected a transaction in, or induced or attempted to induce the purchase or sale of, a municipal security in contravention of the rules promulgated by the MSRB, in particular Rules G-17 and G-32.

106. By engaging in the conduct described above, Wells Fargo has violated, and unless restrained and enjoined, will continue to violate, Section 15B(c) of the Exchange Act [15 U.S.C. §78o-4].

EIGHTH CLAIM FOR RELIEF (against Cannava)
**Aiding and Abetting Wells Fargo's Violations of MSRB Rules G-17 and G-32
and Section 15B(c)(1) of the Exchange Act**

107. The Commission repeats and incorporates by reference the allegations in paragraphs 1-77 above as if set forth fully herein.

108. Wells Fargo is a broker-dealer, municipal securities broker and a municipal securities dealer.

109. The 38 Studios Bonds are "securities" under Section 3(a)(10) of the Exchange Act [15 U.S.C. §78c(a)(10)].

110. By engaging in the conduct described above, Wells Fargo has, directly and indirectly, by use of the mails or the means or instrumentalities of interstate commerce, effected a transaction in, or induced or attempted to induce the purchase or sale of, a municipal security in contravention of the rules promulgated by the MSRB, in particular Rules G-17 and G-32.

111. By engaging in the conduct described above, Wells Fargo has violated, and unless restrained and enjoined, will continue to violate, Section 15B(c) of the Exchange Act [15 U.S.C. §78o-4].

112. Cannava knowingly, recklessly or negligently provided substantial assistance to Wells Fargo's violations of MSRB Rules G-17 and G-32 and its violation of Section 15B(c) of the Exchange Act [15 U.S.C. §78o-4].

113. By engaging in the conduct described above, Cannava aided and abetted Wells Fargo's violations of MSRB Rules G-17 and G-32 and its violation of Section 15(B)(c) of the Exchange Act [15 U.S.C. §78o-4].

PRAYER FOR RELIEF

WHEREFORE, the Commission requests that this Court:

A. Enter a permanent injunction restraining defendants EDC and Wells Fargo and each of their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from future violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)];

B. Enter a permanent injunction restraining defendants Cannava, Stokes and Saul and each of their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from aiding and abetting future violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)];

C. Enter a permanent injunction restraining defendant Wells Fargo and its agents, servants, employees and attorneys and all persons in active concert or participation with it who receive actual notice of the injunction by personal service or otherwise, including facsimile transmission or overnight delivery service, from future violations of Section 15B(c) of the Exchange Act [15 U.S.C. §77o-4], and MSRB Rules G-17 and G-32;

D. Enter a permanent injunction restraining defendant Cannava and his agents, servants, employees and attorneys and all persons in active concert or participation with him who receive actual notice of the injunction by personal service or otherwise, including facsimile

transmission or overnight delivery service, from aiding and abetting future violations of Section 15B(c) of the Exchange Act [15 U.S.C. §77o-4], and MSRB Rules G-17 and G-32;

E. Order defendants EDC, Wells Fargo and Cannava to disgorge their ill-gotten gains, plus prejudgment interest, with said monies to be distributed in accordance with a plan of distribution to be ordered by the Court.

F. Order all defendants to pay an appropriate civil monetary penalty pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)];

E. Enter permanent injunctions restraining defendants Cannava, Stokes and Saul from participating in an offering of municipal securities, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any municipal security, provided however, that such injunctions shall not prevent them from purchasing or selling municipal securities for their own personal accounts.

F. Retain jurisdiction over this action to implement and carry out the terms of all orders and decrees that may be entered; and

G. Award such other and further relief as the Court deems just and proper.

JURY DEMAND

The Commission hereby demands a trial by jury on all claims so triable.

Respectfully submitted,

**SECURITIES AND EXCHANGE
COMMISSION**

By its attorneys,

/s/ Kathleen Burdette Shields
Kathleen Burdette Shields (Mass. Bar No. 637438)
Louis A. Randazzo (New York Bar No. 2416485)
33 Arch Street, 24th Floor
Boston, MA 02110
(617) 573-8904 (Shields)
(617) 573-8985 (Randazzo)
(617) 573-4590 (Facsimile)
ShieldsKa@sec.gov; RandazzoL@sec.gov

Dated: March 7, 2016

Buonaiuto, Kenneth

From: Catlow, Todd
Sent: Wednesday, March 9, 2016 6:03 PM
To: Moynihan, Matthew
Cc: Buonaiuto, Kenneth
Subject: RE: RE: FW: Lou Randazzo

Thank you.

Respectfully submitted,


Lt. Colonel Todd Catlow
Rhode Island State Police
401-444-1002

From: Moynihan, Matthew
Sent: Wednesday, March 9, 2016 11:59 AM
To: Catlow, Todd <Todd.Catlow@risp.gov>
Cc: Buonaiuto, Kenneth <Kenneth.Buonaiuto@risp.gov>
Subject: Fwd: RE: FW: Lou Randazzo

Lieutenant Colonel,

Lieutenant Buonaiuto contacted Lou RANDAZZO. He has advised that we have had everything the SEC has regarding their civil investigation. Lieutenant Buonaiuto continues to do a great job with this investigation as it winds down. Please see below regarding Lieutenant Buonaiuto's findings.

Respectfully submitted,

Captain Matthew C. Moynihan
Assistant Detective Commander
Rhode Island State Police
311 Danielson Pike
North Scituate, RI 02857
matthew.moynihan@risp.gov
401-444-1012 (office)

[401-336-2034](tel:401-336-2034) (fax)

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----- Forwarded message -----

From: "**Buonaiuto, Kenneth**" <Kenneth.Buonaiuto@risp.gov>
Date: Wed, Mar 9, 2016 at 8:29 AM -0800
Subject: RE: FW: Lou Randazzo
To: "Moynihan, Matthew" <Matthew.Moynihan@risp.gov>

Captain,

I spoke with him this morning. He discussed the material his office was in possession of that assisted them in bringing their civil complaint forward. Everything that they have we also have. Additionally, everything they have in their complaint is information that we have had knowledge of for several years and have had detailed discussions with the RIAG's Office to determine if there were elements present to charge criminally. As a result of these discussions it was determined that there are no state criminal statutes that would apply.

Respectfully submitted,

Lieutenant Kenneth S. Buonaiuto
Major Crimes Unit
Rhode Island State Police
311 Danielson Pike
North Scituate, RI 02857
(401) 444-1046 (office)
(401) 444-1038 (fax)

From: Moynihan, Matthew
Sent: Wednesday, March 9, 2016 9:29 AM
To: Buonaiuto, Kenneth <Kenneth.Buonaiuto@risp.gov>
Subject: Fwd: FW: Lou Randazzo

Lieutenant,

Any luck contacting RANDAZZO?

Respectfully submitted,

Captain Matthew C. Moynihan
Assistant Detective Commander
Rhode Island State Police
311 Danielson Pike
North Scituate, RI 02857
matthew.moynihan@risp.gov
401-444-1012 (office)
[REDACTED] (cell)
401-336-2034 (fax)

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not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

From: Catlow, Todd <todd.catlow@risp.gov>
Sent: Tuesday, March 8, 2016 12:16 PM
Subject: FW: Lou Randazzo
To: Moynihan, Matthew <matthew.moynihan@risp.gov>
Cc: Philbin, Joseph <joseph.philbin@risp.gov>

Capt. Moynihan,

Attached is contact information for SEC Attorney Lou Randazzo who is in charge of their 38 Studios investigation. Please have the case agent on our 38 Studios investigation inquire of Randazzo if the SEC has any evidence that would assist our investigation.

Respectfully submitted,

Lt. Colonel Todd Catlow
Rhode Island State Police
401-444-1002

-----Original Message-----

From: Dambruch, Stephen (USARI) [REDACTED]
Sent: Tuesday, March 8, 2016 11:17 AM
To: Catlow, Todd <Todd.Catlow@risp.gov>
Subject: Fwd: Lou Randazzo

Stephen G. Dambruch
First Assistant U.S. Attorney
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

[REDACTED]
(401) 709-5001 (fax)
[REDACTED]

----- Forwarded message -----

From: "Donovan, Dulce (USARI)" <[REDACTED]>
Date: Mar 8, 2016 10:20 AM
Subject: Lou Randazzo
To: "Dambruch, Stephen (USARI)" <[REDACTED]>
Cc:

[X]

Buonaiuto, Kenneth

From: Buonaiuto, Kenneth
Sent: Wednesday, July 27, 2016 1:59 PM
To: Catlow, Todd
Subject: Re: 38 Studios - Revised July 26

Lieutenant Colonel Catlow,

I have reviewed the attached draft in full and feel that the contents of the narrative are accurate and contain as much information that is permissible considering this investigation utilized the grand jury process. I did find one inaccurate reference and two typo errors which I have noted below. If I can assist in any other way please give me a call.

Page 2 refers to Alfred Verrexhia as the Chairman of Board. He was the Vice-Chairman. Governor was Chairman.

Page 6, 4th paragraph from bottom, 1st sentence.....grand jury secrecy would be viewed (be is missing from text)

Page 7, 3rd paragraph from bottom, last sentence....the word UPON should not be in sentence.

Respectfully submitted,
Captain Kenneth S. Buonaiuto.

Sent using OWA for iPhone

From: Catlow, Todd
Sent: Wednesday, July 27, 2016 1:15:03 PM
To: Buonaiuto, Kenneth
Subject: 38 Studios - Revised July 26

Buonaiuto, Kenneth

From: Buonaiuto, Kenneth
Sent: Wednesday, July 27, 2016 2:00 PM
To: Laird, Barbara
Subject: Re: 38 Studios Draft

Thank you very much Barbara.

Respectfully submitted,
Captain Kenneth S. Buonaiuto
Sent using OWA for iPhone

From: Laird, Barbara
Sent: Wednesday, July 27, 2016 1:39:00 PM
To: Buonaiuto, Kenneth
Subject: FW: 38 Studios Draft

From: Catlow, Todd
Sent: Wednesday, July 27, 2016 9:16 AM
To: Laird, Barbara <Barbara.Laird@risp.gov>
Subject: FW: 38 Studios Draft

Respectfully submitted,

Lt. Colonel Todd Catlow
Rhode Island State Police
401-444-1002

From: Gerald Coyne [<mailto:GCoyne@riag.ri.gov>]
Sent: Tuesday, July 26, 2016 10:47 AM
To: ODonnell, Steven <Steven.ODonnell@risp.gov>
Cc: Catlow, Todd <Todd.Catlow@risp.gov>
Subject: 38 Studios Draft

Please find enclosed the most updated "draft" of the planned release concerning 38 Studios.

Buonaiuto, Kenneth

From: Creamer, Robert
Sent: Wednesday, July 27, 2016 9:07 PM
To: O'Donnell, Steven
Cc: Catlow, Todd
Subject: Fw: 38 Studios Information;
Attachments: Buonaiuto, Kenneth.vcf

Colonel:

Colonel Catlow asked that I forward you this email with respect to 38 Studios.

Respectfully,

Lieutenant Creamer

From: Buonaiuto, Kenneth <Kenneth.Buonaiuto@risp.dps.ri.gov>
Sent: Friday, August 21, 2015 2:28 PM
To: O'Donnell, Steven
Cc: Philbin, Joseph; Moynihan, Matthew; Creamer, Robert; Catlow, Todd
Subject: 38 Studios Information;

Colonel Steven G. O'Donnell,

Per your request please see below information regarding the 38 Studios investigation and findings.

- **Where did \$75 million go?**

As part of the loan agreement, 38 Studios received; approximately \$49.5 million in incremental pay-outs over a one year period from November 2010 through November 2011; approximately \$12.7 million was put in a reserve account held by the EDC to be used toward possible loan default payments in the future; approximately 10.6 million was placed in an interest baring account and held by EDC; the remaining approximate \$2.2 million was used to pay for closing fee and municipal bond insurance. As a result of default by 38 Studios it is estimated that the total amount due in principal and interest is \$89 million.

- **Bad Deal???**

I can only give my unqualified opinion on whether I believe this was a bad deal.

After reviewing thousands of documents and interviewing over one hundred individuals, the process in which this deal/agreement came to fruition appeared to have been flawed in several respects.

- 1) The legislative process that culminated in the passage of the Jobs Creation Guarantee Program Bill that provided the authority to the EDC to issue a total of \$125 million in municipal bonds to businesses in Rhode Island, of which \$75 million went to the 38 Studios loan, was not a transparent process. There were only a select number of politically elected and politically appointed

government officials who knew that the \$75 million increase to the final Bill from \$50 million to \$125 million was intended to provide the needed funds for 38 studios.

- 2) Who knew \$75 million increase was intended for 38 Studios prior to legislative vote but did not disclose this information to the full House and Senate?

Gordon Fox

William Murphy

Steven Constantino

Teresa Paiva-Weed

Governor Carcieri

Keith Stokes

Michael Saul

- 3) #38 Studios representatives clearly articulated to EDC representatives that their financial need was a net amount of \$75 million, not the gross amount that was provided to them, which was a much lower amount. Even with this expressly communicated to EDC personnel, the EDC still vigorously moved forward with the loan agreement.

- 4) It appears that the poor financial state of Rhode Island at the time that this deal was negotiated may have caused the political people that had a hand in this deal to ignore the risk factors associated with an investment in a startup gaming company, in hopes of bringing a potentially large company owned by a celebrity figure to Rhode Island and with it the potential of hundreds of new high paying tech jobs (tax dollars).

- **Corso/Tazza Restaurant**

Evidence supports fact that subcontractor (SYNET), who installed low voltage wiring at 38 Studios, also installed low voltage wiring at Tazza Restaurant (owned by Michael Corso). The installation at both locations took place during the same time period.

Investigation has determined that Steve Nappa, of Nappa Construction, who was the general Contractor for both renovation jobs, suggested to SYNET personnel that they give Corso a good deal because he can bring more work to them in the future. Nappa denies telling SYNET to bill the cost to 38 Studios. There is no evidence to support the fact that Corso knew SYNET charged the cost to 38 studios. Without this evidence we cannot charge Corso.

- **Attorney Max Wistow**

At the very onset of the State's civil case against parties associated with the \$75 million 38 Studios loan, Attorney Wistow has suggested that his team of attorneys, who represent the State in this civil suit, uncovered evidence to support a charge of Obtaining Money Under False Pretenses against 38 Studios representative (Schilling and his top administrators), as well as, Keith Stokes and Michael Saul of the then EDC. His theory is that the parties above knew that 38 Studios would not be successful and would run out of money prior to completing the game Copernicus if they did not receive the total loan amount of \$75 million. Attorney Wistow suggests that because these parties knew the need was \$75 million, but they still moved forward with the loan closing knowing the amount would be much less, obtained money under false pretenses. He also suggests that 38 Studios, Stokes and Saul withheld this important fact from the EDC Board, who ultimately voted on approval of the loan guarantee. Interviews with all but one of the EDC Board members refute the fact that they did not

know there would be cost and reserves associated with the loan and therefore 38 Studios would not get the full amount needed. Many stated that they felt confident that 38 Studios would be able to find other investors to make up the short fall in money. We have met with Attorney Wistow and his colleagues a number of times to allow him the opportunity to explain his criminal theory. In addition to myself, these meets have included Lieutenant Colonel Catlow, Lieutenant Creamer, Detective J. Brown, Assistant Attorney General Patrick Youngs and myself. All were given their opportunity to weigh in on their thoughts related to Attorney Wistow's criminal theory. All were in consensus that there is no evidence that would support a charge of Obtaining Money Under False Pretenses. We also gave Attorney Wistow the opportunity to present his theory to people within the State Police and Attorney General's Office that hold higher positions than we do. Initially he agreed to set up a time and date in the near future, but each time I contacted his office to arrange a date and time, he was either not available or stated that he was not prepared to make his presentation yet.

Ironically the only EDC Board member we did not fully interview was Karl Wadensten, President of VIBCO. Mr. Wadensten is still a member of the EDC Board, now known at the Commerce RI Board. As a result, when we reached out to Mr. Wadensten to interview him I received a return call from Attorney Wistow who explained that because Mr. Wadensten was a member of the Board and he was the attorney for the State, he asked that we interview Mr. Wadensten in his presence. An interview time and date was scheduled and the location of the interview was at Attorney Wistow's law office. Shortly into the interview when questioning Mr. Wadensten regarding the timeline of EDC Board meetings related to 38 Studios, Attorney Wistow stopped the interview and stated that he did not want his client to continue until he was able to interview him in length himself. Since that initial interview Mr. Wadensten has not been available to continue the interview.

Respectfully submitted,

Lieutenant Kenneth S. Buonaiuto
Rhode Island State Police
Major Crimes Unit
311 Danielson Pike
North Scituate, RI 02857
Phone (401) 444-1046
Fax (401) 444-1038

Buonaiuto, Kenneth

From: O'Donnell, Steven
Sent: Thursday, July 28, 2016 9:13 PM
To: Catlow, Todd; Moynihan, Matthew; Philbin, Joseph; Buonaiuto, Kenneth; Creamer, Robert; Laird, Barbara
Subject: 38 studios.
Attachments: 38 Studios.docx; ATT00001.htm

Please review my draft remarks for the press conference on 38 studios and get back to me.

Respectfully,

Colonel Steven G. O'Donnell
Superintendent of the Rhode Island State Police and Commissioner of the Rhode Island Department of Public Safety
(401)-444-1001

Begin forwarded message:

From: Steven O'Donnell <[REDACTED]>
Date: July 28, 2016 at 9:09:08 PM EDT
To: "O'Donnell, Steven" <Steven.ODonnell@risp.gov>

[REDACTED]
[REDACTED]
[REDACTED]

Buonaiuto, Kenneth

From: Buonaiuto, Kenneth
Sent: Friday, July 29, 2016 12:54 PM
To: O'Donnell, Steven; Catlow, Todd; Moynihan, Matthew; Philbin, Joseph; Creamer, Robert; Laird, Barbara
Subject: Re: 38 studios.

Colonel O'Donnell,

I have reviewed this document and find it to be very accurate and contains a sufficient amount of information to support our position and conclusion with this investigation without violating grand jury restrictions. Also, I was referred to in the text as the officer in charge of the Financial Crimes Unit. During this investigation I was an NCO in the Financial Crimes Unit. Lieutenant Creamer was the officer in charge of the Unit.

Respectfully,
Captain Kenneth S. Buonaiuto.

Sent using OWA for iPhone

From: O'Donnell, Steven
Sent: Thursday, July 28, 2016 9:12:58 PM
To: Catlow, Todd; Moynihan, Matthew; Philbin, Joseph; Buonaiuto, Kenneth; Creamer, Robert; Laird, Barbara
Subject: 38 studios.

Please review my draft remarks for the press conference on 38 studios and get back to me.

Respectfully,

Colonel Steven G. O'Donnell
Superintendent of the Rhode Island State Police and Commissioner of the Rhode Island Department of Public Safety
(401)-444-1001

Begin forwarded message:

From: Steven O'Donnell [REDACTED]
Date: July 28, 2016 at 9:09:08 PM EDT
To: "O'Donnell, Steven" <Steven.O'Donnell@risp.gov<mailto:Steven.O'Donnell@risp.gov>>

[REDACTED]

Buonaiuto, Kenneth

From: Catlow, Todd
Sent: Friday, July 29, 2016 3:17 PM
To: Laird, Barbara
Subject: 38 Studios Press Release
Attachments: 38 Studios Release 072916.docx

Respectfully submitted,

Lt. Colonel Todd Catlow
Rhode Island State Police
401-444-1002



For Immediate Release

Friday, July 29, 2016

Contact:

Rhode Island State Police
Lt. Colonel Todd Catlow
401-444-1002

Office of Attorney General
Amy Kempe
401-274-4400/401-952-7726 (cell)

Results of the Criminal Investigation of 38 Studios, LLC

*Issued by the Rhode Island State Police and
the Rhode Island Office of Attorney General*

This documents outlines the scope of the investigation by the Rhode Island State Police and Rhode Island Attorney General of the failure of 38 Studios, LLC ("38 Studios"), as well as the results of this investigation.

At the outset, it is important to stress that the sole focus of this investigation was to determine if there was sufficient probable cause to charge any individual with a criminal violation of the Rhode Island General Laws. Unlike many criminal investigations which focus upon a single incident, this investigation focused upon events taking place over a period of approximately two years, from 2010 through 2012.

Let it be clear, this investigation is independent and wholly separate from the civil litigation pending, and takes no position on the civil case. Results from the criminal investigation should not be imparted on the civil case in any aspect.

As in the case of most investigations of alleged white collar crime or political corruption, this investigation consisted of numerous incidents in which information was discovered; documents were sought, generally through a subpoena or search warrant; and witness interviews occurred both independent of the grand jury and sometimes preceding it prior to a witness being called to the grand jury. For any witness, this sequence of events could take weeks or even months.

In pursuing this investigative goal, we were mindful of civil litigation filed by the Rhode Island Economic Development Corporation ("RI-EDC") in Providence County Superior Court, as well as an action filed by the Securities and Exchange Commission. Although the criminal investigation of this matter was largely completed at the time, investigators had access to the publicly released depositions of numerous witnesses in the Superior Court civil litigation, which were released on approximately September 24, 2015. Following the release of those documents, investigators reviewed all publicly available depositions to ensure that none contained evidence of criminal conduct not previously known to law enforcement. After a time consuming and extensive review, it was determined that no criminal conduct was disclosed through those documents.

The business entity known as 38 Studios was founded in Massachusetts in 2006 for the purpose of developing and marketing video games. The company was founded and headed by former Boston Red Sox pitcher Curt Schilling.

On May 19, 2010 legislation was introduced in the Rhode Island House of Representatives by Representative Steven Costantino and others to authorize the RI-EDC, "to create the corporation's Job Creation Guaranty Program" through the issuance of up to \$125,000,000 of bonds or other obligations. The bill stated that, "Rhode Island continues to suffer from continuing high unemployment and other ill effects from the most recent national recession" and that the bonds were intended to "induce lending to companies growing their employment in Rhode Island." The bill simply authorized the creation of the program, and did not identify the company or companies that would benefit by the issuance of these bonds. Six days later, the bill was passed by the House of Representatives, and transferred to the Senate, where it was passed on June 11, 2010.

On May 20, 2010, one day after introduction of the legislation in the House of Representatives, identical legislation was introduced into the Rhode Island Senate by Senator Daniel DaPonte and others. The bill was passed by the Senate on June 9, 2010, and transferred to the House, which passed the bill the following day.

Both bills were signed by Governor Donald Carcieri on June 11, 2010.

This investigation revealed no evidence of criminal wrongdoing in connection with the legislative passage of the "Job Creation Guaranty Program."

Five days after signing the legislation establishing the Job Creation Guaranty Program, Governor Carcieri presided over a public meeting of the RI-EDC Board of Directors. The Board was presented with three presentations concerning 38 Studios and the video gaming industry. One presentation was made by Mr. Mark Lamarre of Wells Fargo, who explained the 20-year history of Wells Fargo providing financial assistance to the interactive entertainment market. During

his presentation, Mr. Lamarre “described 38 Studios as having a complete and experienced board of directors and management team, with an ability to hire and retain the right people.” The other two presenters were Mr. Harvey Cohen and Mr. Barry Gilbert, the President and Vice President, respectively, of Strategy Analytics.

At the same meeting, Curt Schilling was introduced to the RI-EDC Board of Directors, and he discussed the history of his company.

On July 26, 2010, the RI-EDC met once again, and formally approved financing for 38 Studios. Mr. Keith Stokes, Executive Director of the RI-EDC, told the Board that, “the EDC has been deliberating this matter and performing its due diligence for the last several months.” Mr. J. Michael Saul, the Deputy Director of the RI-EDC, presented to the Board, and told the Board that, “The company plans to bring in 450 direct jobs with an average annual wage of \$67,500 within three years. In addition, it is anticipated that an additional 1,113 indirect jobs will result from this venture.”

Saul further explained that the company would be required to relocate to Rhode Island. He also noted some of the risks inherent in this proposal, including “investment in a pre-revenue company, a binary revenue stream, the fact that the company is focused on a hit driven product, and the concentration of 60% of the State’s Job Creation Guaranty Program to one company.”

By a vote of 8 – 1, the RI-EDC Board of Directors approved the proposal to fund 38 Studios by adopting the Authorizing Resolution presented to the Board, which authorized the RI-EDC staff to issue \$75 million in bonds, borrow an identical sum from the purchasers of those bonds, and using those proceeds, enter into a loan with 38 Studios.

According to the Term Sheet prepared at the time, the purpose of the loan was to provide the necessary financing to relocate 38 Studios to Rhode Island, complete production of a video game then under development known as “Copernicus”, and capitalize the company’s growth and expansion in Rhode Island.

Over the next several months, documentation concerning this bond issue was prepared.

Under the terms of the loan agreement, 38 Studios received; \$49.5 million in incremental payouts over a one-year period from November 2010 through November 2011; approximately \$12.7 million was put in a reserve account held by the RI-EDC to be used toward possible loan default payments in the future; approximately \$10.6 million was placed in an interest bearing account held by the RI-EDC; the remaining approximate \$2.2 million was used to pay for closing fees and municipal bond insurance.

As a result of the default by 38 Studios, it is estimated that the total amount due in principal and interest is \$89 million.

In May, 2012, 38 Studios defaulted on a \$1.1 million interest payment that was due to RI-EDC. Unable to meet payroll, 38 Studios closed its doors and on June 7, 2012, filed for bankruptcy in Delaware.

A criminal investigation into various aspects of the failure of 38 Studios was initiated by the Rhode Island State Police and by the Federal Bureau of Investigation.

The federal aspect of the investigation was narrowly focused upon potential violations of federal law, including criminal bank fraud. During the course of this phase of the investigation, 15 federal subpoenas were issued to public or private entities and five individuals were interviewed.

On September 24, 2012, the United States Attorney and the Federal Bureau of Investigation concluded their portion of the investigation after determining that the process to obtain related loans did not violate federal criminal laws.

Materials generated by this initial phase of the investigation were turned over to the Rhode Island State Police, which continued to review transactions related to 38 Studios to determine if state criminal laws had been violated. A civil investigation and subsequent lawsuit was and is independent of the criminal investigation.

At that time, the Rhode Island State Police and the Rhode Island Attorney General considered the various investigative tools available through which to pursue this investigation. The most critical issue was whether or not to utilize the grand jury. It was determined to continue with the path initially utilized in the investigation by the United States Attorney which was to pursue the investigation through the grand jury.

The State of Rhode Island has a grand jury system consisting of county grand juries as well as a Statewide Grand Jury. The grand jury must be utilized to indict a defendant who is charged with an offense for which the maximum punishment is life in prison, but it may be utilized to investigate other types of cases as well. The Statewide Grand Jury is typically used to investigate cases requiring presentation of many witnesses.

Although most widely known for its power to bring a formal criminal charge, a grand jury also possesses investigative powers, the most significant of which are to compel witnesses to appear before the grand jury, to compel the production of evidence through the issuance of a subpoena, and to obtain sworn testimony from witnesses. This power, however, is not without limitation as witnesses may assert legal privileges when called to testify.

Although use of the grand jury is an effective and powerful investigative tool, it is not, by design, a transparent institution. There are a number of statutes and rules regulating the grand jury process generally, and the secrecy of that process specifically. In addition, the United States Supreme Court, as well as lower courts, have affirmed the principle of grand jury secrecy.

The United States Supreme Court considered the necessity of grand jury secrecy in the case of United States v. Sells Engineering, Inc. in 1983, stating:

“The grand jury has always occupied a high place as an instrument of justice in our system of criminal law—so much so that it is enshrined in the Constitution. It serves the ‘dual function of determining if there is probable cause to believe that a crime has been committed and of protecting citizens against unfounded criminal prosecutions.’ It has always been extended extraordinary powers of investigation and great responsibility for directing its own efforts:

‘Traditionally the grand jury has been accorded wide latitude to inquire into violations of criminal law. No judge presides to monitor its proceedings. It deliberates in secret and may determine alone the course of its inquiry. The grand jury may compel the production of evidence or the testimony of witnesses as it considers appropriate, and its operation generally is unrestrained by the technical procedural and evidentiary rules governing the conduct of criminal trials. ‘It is a grand inquest, a body with powers of investigation and inquisition, the scope of whose inquiries is not to be limited narrowly by questions of propriety or forecasts of the probable result of the investigation, or by doubts whether any particular individual will be found properly subject to an accusation of crime.’

These broad powers are necessary to permit the grand jury to carry out both parts of its dual function. Without thorough and effective investigation, the grand jury would be unable either to ferret out crimes deserving of prosecution, or to screen out charges not warranting prosecution..

The same concern for the grand jury's dual function underlies the ‘long-established policy that maintains the secrecy of the grand jury proceedings in the federal courts.’

We consistently have recognized that the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings. In particular, we have noted several distinct interests served by safeguarding the confidentiality of grand jury proceedings. First, if preindictment proceedings were made public, many prospective witnesses would be hesitant to come forward voluntarily, knowing that those against whom they testify would be aware of that testimony. Moreover, witnesses who appeared before the grand jury would be less likely to testify fully and frankly, as they would be open to retribution as well as to inducements. There also would be the risk that those about to be indicted would flee, or would try to influence individual grand jurors to vote against indictment. Finally, by preserving the secrecy of the

proceedings, we assure that persons who are accused but exonerated by the grand jury will not be held up to public ridicule.

Grand jury secrecy, then, is 'as important for the protection of the innocent as for the pursuit of the guilty.' (Footnotes and citations eliminated.)"

The general rule of secrecy covering matters occurring before the grand jury in Rhode Island is found in Rule 6(e) of the Superior Court Rules of Criminal Procedure, which states, "A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the state, or any person to whom disclosure is made under paragraph (e)(3)(A)(ii) shall not disclose matters occurring before the grand jury except as otherwise provided for in these rules. A knowing violation of Rule 6 may be punished as a contempt of court."

In addition, "Unlawful grand jury disclosure" is a felony pursuant to Section 12-11.1-5.1, which states:

§ 12-11.1-5.1 Unlawful grand jury disclosure. – (a) *Any person who, when being a grand juror, a public prosecutor, a grand jury stenographer, a grand jury interpreter, a police officer or a peace officer guarding a witness in a grand jury proceeding, or a clerk, attendant, warden or other public servant having official duties in or about a grand jury room or proceeding, or a public officer or public employee, obtains information in his or her official capacity and intentionally discloses, prior to the report of the grand jury on the matter, to another the nature or substance of any grand jury testimony, or any decision, result, or other matter attending a grand jury proceeding which is required by law to be kept secret, except in the proper discharge of his or her official duties or upon written order of the court shall be guilty of grand jury disclosure. Nothing in this section shall be construed to prohibit a witness from disclosing his or her own testimony.*

(b) Any person who violates any provision of this section shall be punishable by a fine not exceeding five thousand dollars (\$5,000) or imprisonment not exceeding one year, or both.

Although it was recognized that the principles of grand jury secrecy would viewed by some as limiting the public's access to the results of this criminal investigation, it was determined that the investigative benefits of utilizing the grand jury to compel the production of evidence outweighed that potential criticism.

The utilization of the Grand Jury in this process had two distinct phases. Initial subpoenas were issued by a sitting Statewide Grand Jury.

The presentation of matters related to the investigation of 38 Studios to the Statewide Grand Jury began on October 15, 2012, with the Statewide Grand Jury issuing subpoenas to various

entities at the request of an investigator from the Rhode Island State Police Financial Crimes Unit.

Typically, subpoenas from the Grand Jury are issued for documents and other business records. A person or business in receipt of a Grand Jury subpoena has the opportunity to contest production of records through the timely filing of a "motion to quash" the subpoena. In the absence of the granting of such a motion, records are generally returned to the Grand Jury in approximately 30 days. A total of 21 subpoenas were issued by the Statewide Grand Jury.

In December, 2013, the State Police and Office of Attorney General were prepared to bring testimony by witnesses to the grand jury.

The Statewide Grand Jury sits for an initial term of six months, which may be extended for two additional six month terms. A Statewide Grand Jury, by rule, can only sit for a maximum term of 18 months.

The Grand Jury in this investigation that heard substantive testimony was sat in December, 2013, served the initial six months plus two extensions, sitting for a total of 18 months, ending in July, 2015.

In total, 146 persons were interviewed in connection with this investigation, many whom were interviewed more than once.

Between November 20, 2012 and December 2, 2015, approximately 34 witnesses were interviewed by the Rhode Island State Police, the Attorney General's office, or both, including the five witnesses who were originally interviewed by the FBI, members of the Board of Directors of the RI-EDC, former Governor Donald Carcieri, RI-EDC staff, executives with 38 Studios, and others.

Of those 34 individuals, 11 were called before the Statewide Grand Jury for testimony. In addition, the State Police lead investigator assigned to the matter testified before the Grand Jury at length on multiple occasions.

Multiple and prolonged meetings occurred during the period between detectives from the State Police, prosecutors from the Attorney General's Office, and attorneys representing various witnesses.

Over the course of the investigation, every member of the 2010 General Assembly, which had passed the legislation authorizing the Job Creation Guaranty Program, was contacted either individually or through counsel by the Rhode Island State Police¹.

¹ Former State Representative John McCauley was not contacted due to his federal prison sentence on an unrelated matter.

In addition to the interviews and grand jury testimony, tens of thousands of pages of documentary evidence and depositions were reviewed by the investigator and prosecutor assigned to this investigation.

The goal of the Rhode Island State Police and Rhode Island Office of Attorney General's investigation into the funding and failure of 38 Studios was not to create the definitive history of how the legislation to fund 38 Studios came to be, why that business failed, who made poor business or political decisions along the way, or who, if anyone, should be civilly liable for their action or inaction. Those questions are for the civil litigation.

Rather, the very narrow focus was to determine whether the actions of any person or persons violated any criminal provisions of the Rhode Island General Laws.

Because there remains the possibility that civil litigation arising from this matter or other means will disclose additional facts, those facts may, at some point in the future, need to be evaluated. The possibility of additional facts, however, does not justify keeping this investigation active when balanced against the public interest in resolving the issue of whether criminal conduct occurred.

If subsequent facts are made known that justify reactivation of this investigation, the Rhode Island State Police and Office of Attorney General are prepared to do so.

Although we are prohibited by law from disclosing the content of the matters which occurred before the Statewide Grand Jury, we are confident that based upon those proceedings, and supported by the witness interviews and the documentary evidence gathered and reviewed by the investigator and the prosecutor, there were no provable criminal violations of the Rhode Island General laws in connection with the funding of 38 Studios, the disbursement of funds to 38 Studios, and by 38 Studios to vendors.

In other words, the quantity and quality of the evidence of any criminal activity fell short of what would be necessary to prove any allegation beyond a reasonable doubt and as such the Rules of Professional Conduct precluded even offering a criminal charge for grand jury consideration.

Finally, although we have previously mentioned the narrow and specific focus of this investigation, the conclusion of this criminal investigation should be considered completely independent from any and all civil litigation related to this subject matter.

-end-

Buonaiuto, Kenneth

From: Laird, Barbara
Sent: Tuesday, August 2, 2016 2:53 PM
To: O'Donnell, Steven; Andrews, Paul; Catlow, Todd
Subject: FW: News Release on 38 Studios documents
Attachments: News release on 38 Studio documents .pdf

Sirs,
Please see below message from Ian Donnis of RI Public Radio.
Respectfully,
Barbara

From: Ian Donnis [mailto:idonnis@ripr.org]
Sent: Tuesday, August 2, 2016 2:38 PM
To: Laird, Barbara <Barbara.Laird@risp.gov>
Subject: FW: News Release on 38 Studios documents

Hi Barbara,

I'd welcome a response from Colonel O'Donnell to the arguments presented below.

Thanks,

Ian Donnis
RI Public Radio

From: RI ACLU [mailto:riaclu@aol.com]
Sent: Tuesday, August 02, 2016 10:38 AM
To: riaclu@aol.com
Subject: News Release on 38 Studios documents

NEWS RELEASE

TUESDAY, AUGUST 2, 2016

OPEN GOVERNMENT GROUPS CALL FOR RELEASE OF 38 STUDIOS DOCUMENTS

Highlighting the "extraordinarily strong public interest" in the investigation of the 38 Studios scandal and calling "less than compelling" the arguments offered for keeping the records of that investigation secret, five open government groups today called on Attorney General Peter Kilmartin and State Police Superintendent Steven O'Donnell to release those documents to the public.

In a detailed letter sent to the two officials today, the five groups – ACCESS/RI, the ACLU of RI, Common Cause RI, the League of Women Voters of RI, and the New England First Amendment Coalition – stated: "[T]he disaster known as 38 Studios happened because of a deeply ingrained culture of secrecy in this state. The official state investigation into that disaster should not perpetuate that culture."

The letter noted that the records being withheld included both those considered by the grand jury and the numerous other records generated by the investigation that were not presented to the grand jury. Regarding the grand jury records, the letter pointed to two other newsworthy incidents – the Station Fire

tragedy and, in 2000, the shooting of off-duty police officer Cornel Young, Jr. – where grand jury records were released. The groups rejected as unpersuasive the arguments that the two law enforcement agencies have given for not following the path taken in the Station Fire investigation in having the records opened.

The open government groups also argued there were compelling reasons for releasing the investigatory records that were gathered by the two agencies outside of the grand jury. Noting that “of the 146 witnesses your agencies interviewed, only 11 were called before the grand jury,” the groups stated that there was “thus a wide range of independent information gathered by your agencies that would shed light on this incredibly important incident in Rhode Island history if you publicly released the information – which, under the Access to Public Records Act (APRA), you have the clear right to do.” The letter noted that the State Police recently took that route following two highly publicized incidents – the Cranston parking ticket scandal and the controversial school resource officer “body slam” incident at Tolman High School in Pawtucket. “Surely the public deserves similar access to information about an investigation involving millions of taxpayer dollars,” the groups’ letter claimed.

A copy of the groups’ letter can be found here:

www.riaclu.org/images/uploads/Letter_to_AG_and_RISP_on_release_of_38_Studio_documents_FINAL_red.pdf

FOR MORE INFORMATION, CONTACT:

Linda Lotridge Levin, ACCESS/RI: 351-3278

John Marion, Common Cause RI: 861-2322

Justin Silverman, NEFAC: (508) 983-6006

Steven Brown, ACLU of RI: 831-7171

Steven Brown
Executive Director
ACLU of Rhode Island
128 Dorrance Street, Suite 220
Providence, RI 02903
(p) 401 831-7171
(f) 401 831-7175
www.riaclu.org

Buonaiuto, Kenneth

From: O'Donnell, Steven
Sent: Tuesday, August 2, 2016 4:18 PM
To: Ian
Cc: Catlow, Todd; Andrews, Paul
Subject: 38 Studios

Ian, I have not had the opportunity to read the letter yet. As stated earlier, our investigation is still open and we are awaiting the closure of the civil part of 38 Studios to come to a finality. The laws governing access to public records and the grand jury process are clear in what can and can't be done with records. I certainly understand the public's right to know and share the same concern as a citizen. Once the civil case is closed, we will access what needs to be done with documents pertaining to the 38 Studios investigation. From the onset of the Cranston Police assessment I was clear that it would be released when completed. Regarding the Tolman high school investigation, once it was closed, we redacted the reports per state law and released them. I am available to discuss if you like at 499-9468.

Respectfully,

Colonel Steven G. O'Donnell
Superintendent of the Rhode Island State Police and Commissioner of the Rhode Island Department of Public Safety
(401)-444-1001

Buonaiuto, Kenneth

From: Michael (GOV) Raia <Michael.Raia@governor.ri.gov>
Sent: Tuesday, August 23, 2016 10:05 AM
To: ODonnell, Steven
Subject: 38 Studios: Gov's Commerce Team Announces Major Settlement, Litigation Continues

Friends –

Earlier today, the Commerce Corporation announced a **\$25.6 million settlement** with Wells Fargo and Barclays, two of the defendants in the 38 Studios lawsuit. If the Court approves the settlement, the Governor and her Commerce team will have **recovered more than \$42 million** (nearly half of the \$88 state million moral obligation on the bonds).

Governor Raimondo and the Commerce Corporation are committed to recovering as much taxpayer money as possible and remain **focused on litigation against the remaining 38 Studios defendants**, including Curt Schilling and First Southwest Company.

Shortly after the settlement was filed in Rhode Island Superior Court, Governor Raimondo released the following statement to media:

"38 Studios was a bad deal for Rhode Island and I was against it from the start. It's our job to be as aggressive as we can in recovering as much taxpayer money as possible, and today's settlement is another huge step toward that goal. This settlement and the two previous total over \$42 million, and we are committed to keep going. Rhode Islanders understandably feel hurt by this deal – and I do too – but I want everyone to know that we are demanding accountability, getting money back, and moving the state forward."

--mike

Mike Raia
Communications Director
Office of Governor Gina M. Raimondo
State House, Providence, Rhode Island 02908
Desk: 401-222-8134
Email: Michael.Raia@Governor.RI.gov
Twitter: [@MikeRaia](https://twitter.com/MikeRaia)

Buonaiuto, Kenneth

From: Laird, Barbara
Sent: Tuesday, August 23, 2016 11:37 AM
To: ODonnell, Steven
Subject: Wells Fargo Settlement

Colonel,

WPRI is announcing on their website that the state settled with Wells-Fargo for \$26 million. Here's the link.

<http://wpri.com/2016/08/23/ri-agrees-to-26m-settlement-with-wells-fargo-barclays-in-38-studios-lawsuit/>

Barbara J. Laird
Executive Assistant
Rhode Island State Police Headquarters
311 Danielson Pike
North Scituate, RI 02857
Telephone: (401) 444-1120
Fax: (401) 444-1105
E-Mail: Barbara.laird@risp.gov